

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

UNITED STATES

v.

DAVID ROWE

Defendant.

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Case No. CCB-11-0376

EMERGENCY MOTION
FOR COMPASSIONATE RELEASE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)

David Rowe, through undersigned counsel, Tyler Mann and the Law Offices of Mann & Risch, respectfully moves this Court to grant his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on the “extraordinary and compelling reasons” presented by his vulnerability to COVID-19. An initial Emergency Motion was filed on August 14, 2020, ECF No. 31. The Government filed a response in opposition on August 26, 2020, ECF No. 34. The Motion has not been ruled upon yet.

When Mr. Rowe first filed this motion, there was only two active cases at FCI Devens. Currently, there are 97 inmates and 3 staff with COVID 19. Mr. Rowe is unfortunately one of them. On December 12, 2020, Mr. Rowe was brought to the medical clinic and reported having a dry cough. He was tested and came back positive for COVID 19. Mr. Rowe was then placed on the isolation wing and monitored. For the next day and a half, Mr. Rowe reported no new symptoms, until December 14th, when his temperature rose to 100 degrees and he reported body aches and pain. On December 16, 2020, Mr. Rowe was taken to the UMass Medical Center Emergency Room. His oxygen levels had started to fall, and he reported being nausea and weak. After being admitted to the hospital, his condition fluctuated. Mr. Rowe was given a discharge

date of December 25, 2020, but then his oxygen levels dropped into the low 80's and he was placed on supplemental oxygen and medication. The most recent note from December 21, 2020, is that Mr. Rowe's oxygen levels have fallen into the 60's and the hospital does not expect him to survive this admission. He has signed a do not resuscitate form and remains chained to his hospital bed per BOP guidelines. Please see Exhibit 1.

The government has already conceded that Mr. Rowe has demonstrated "extraordinary and compelling" reasons that justify a reduction in his sentence. ECF No. 34 at 16. And for good reason: Mr. Rowe is obese, and he has documented diagnosis of atrial fibrillation, non-ischemic cardiomyopathy, and obesity. ECF No. 34 at 16.

Recognizing that the Court may find a continued need to protect the public, Mr. Rowe respectfully requests that the Court reduce his term of imprisonment to time served and impose a one-year period of home confinement as a condition of supervised release. Since Mr. Rowe is not expected to survive his current admission to the hospital, the reduction in term would allow the handcuffs and chains to be removed from Mr. Rowe and allow him to die with the dignity his family seeks. Any need to protect the public in this case does not justify continuing to incarcerate Mr. Rowe in a facility experiencing an outbreak of COVID-19— especially not when the Court can accomplish any goal of protecting the public by imposing a period of home confinement.

That in this attorney spoke with a UMass Medical Center representation on December 22, 2020 who confirmed that the prognosis was extremely dire and it was very likely Mr. Rowe would not survive this hospitalization. That this attorney spoke with AUSA Paul Budlow, who had apprised his supervisors on the situation, but did not have a position as of this writing.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Motion, the August 14, 2020 Motion and Memorandum in support and its exhibits, and the reply, Mr. Rowe respectfully requests that the Court reduce his term of imprisonment to time served and add a one-year period of home confinement as a condition of his supervised release.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December 2020, a copy of the foregoing Motion was emailed to the Assistant United States Attorney Paul Budlow, Department of Justice, 36 S. Charles St, Baltimore, MD 21201.

_____/s/_____
Tyler L. Mann